

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

IN RE: Paul and Virginia Gissing)
Ward 021, Block 104, Parcel 00012) Shelby County
Ward 072, Block 121B, Parcel 00025)
Ward 093, Block 417I, Parcel 00019)
Commercial Property)
Tax Year 2006)

INITIAL DECISION AND ORDER DISMISSING APPEAL

Statement of the Case

The subject property is presently valued as follows:

| | <u>Land Value</u> | <u>Improvement Value</u> | <u>Total Value</u> | <u>Assessment</u> |
|--------------|-------------------|--------------------------|--------------------|-------------------|
| Parcel 00012 | \$ 4,700 | \$17,300 | \$22,000 | \$ 8,800 |
| Parcel 00025 | \$10,400 | \$47,700 | \$58,100 | \$23,240 |
| Parcel 00019 | \$16,900 | \$77,400 | \$94,300 | \$37,720 |

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on July 10, 2007 in Memphis, Tennessee. In attendance at the hearing were registered agent Robert Kahn and Shelby County Property Assessor's representative John Zelinka, Esq.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of three duplexes located in Memphis, Tennessee.

The threshold issue before the administrative judge concerns jurisdiction. This issue arises from the fact that none of the disputed appraisals were appealed to the Shelby County Board of Equalization. Instead, the taxpayers filed appeals directly with the State Board of Equalization which were received on July 25, 2007 and July 28, 2007.

The administrative judge finds that Tennessee law requires a taxpayer to appeal an assessment to the County Board of Equalization prior to appealing to the State Board of Equalization. Tenn. Code Ann. §§ 67-5-1401 & 67-5-1412(b). A direct appeal to the State Board is permitted only if the assessor does not timely notify the taxpayer of a change of assessment prior to the meeting of the County Board. Tenn. Code Ann. §§ 67-5-508(a)(3) & 67-5-903(c). Nevertheless, the legislature has also provided that:

The taxpayer shall have right to a hearing and determination to show reasonable cause for the taxpayer's failure to file an appeal as provided in this section and, upon demonstrating such reasonable cause, the [state] board shall accept such appeal from the taxpayer up to March 1 of the year subsequent to the year in which the assessment was made.

Tenn. Code Ann. § 67-5-1412(e). The Assessment Appeals Commission, in interpreting this section, has held that:

The deadlines and requirements for appeal are clearly set out in the law, and owners of property are charged with knowledge of them. It was not the intent of the 'reasonable cause' provisions to waive these requirements except where the failure to meet them is due to illness or other circumstances beyond the taxpayer's control.

Associated Pipeline Contractors, Inc. (Williamson County, Tax Year 1992). *See also John Orovets* (Assessment Appeals Commission, Cheatham County, Tax Year 1991). Thus, for the State Board of Equalization to have jurisdiction in this appeal, the taxpayers must show that circumstances beyond their control prevented them from appealing to the Shelby County Board of Equalization.

The taxpayer's representative, Robert Kahn, testified that the taxpayers are California residents unfamiliar with Tennessee law. According to Mr. Kahn, the taxpayers assumed subject parcels would be appraised at their purchase prices as is the case if California.

Mr. Kahn introduced into evidence an unsigned memorandum from Virginia Gissing which provided in pertinent part as follows:

I purchased the properties under appeal in January of 2006. I did not receive any assessment notice from the assessor. The first notice of the assessment that I received was in July from the City of Memphis tax bills. I filed an appeal to the State in July.

As I am responsible for the taxes, I have the right to file an appeal under 67-5-1407 of the state code.

Section 67-5-1412 provides that a taxpayer can file an appeal no later than March 1 of the following year with reasonable cause. As I am from California, I was unfamiliar with Tennessee law. From what I have been told, the deadlines for filing appeals in Tennessee is not uniform in every county. As I did not receive an assessment notice from the assessor, I respectfully request that you find for reasonable cause for not appealing to the county board first as I did file to the State Board within 45 days of receiving the first tax bills.

The administrative judge finds that Shelby County underwent a countywide reappraisal in 2005. The administrative judge finds that no assessment change notices were issued for tax year 2006 because the values were not changed. *See* Tenn. Code Ann. § 67-5-508(a)(3).

The administrative judge is unaware of a single decision holding that ignorance of the law constitutes reasonable cause for not appealing to a local board of equalization. Moreover, the administrative judge would note that the taxpayers are real estate investors and the settlement statements filed with the appeal forms indicate that the property taxes were prorated. The administrative judge finds that a taxpayer exercising due diligence

would have made the necessary inquiries to determine how subject parcels were being valued and taxed.

Based upon the foregoing, the administrative judge finds that the taxpayers failed to establish reasonable cause for not appealing to the Shelby County Board of Equalization and these appeals should be dismissed for lack of jurisdiction.

ORDER

It is therefore ORDERED that these appeals be dismissed for lack of jurisdiction and the following values and assessments remain in effect for tax year 2006:

| | <u>Land Value</u> | <u>Improvement Value</u> | <u>Total Value</u> | <u>Assessment</u> |
|--------------|-------------------|--------------------------|--------------------|-------------------|
| Parcel 00012 | \$ 4,700 | \$17,300 | \$22,000 | \$ 8,800 |
| Parcel 00025 | \$10,400 | \$47,700 | \$58,100 | \$23,240 |
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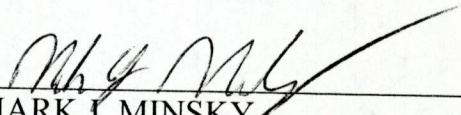
It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or
3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 25th day of July, 2007.



MARK J. MINSKY
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Paul and Virginia Gissing
Tameaka Stanton-Riley, Appeals Manager